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7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-20-0006

10 **PETITION FOR TECHNICAL**  
11 **AND CLARIFYING**  
12 **AMENDMENTS TO RULES 7, 8.1,**  
13 **16, 37, 55, AND RULE 84 FORMS**  
14 **11(a), 12(a), 13(a), AND 14(a) OF**  
**THE ARIZONA RULES OF CIVIL**  
**PROCEDURE**

**COMMENT OF**  
**THE STATE BAR OF ARIZONA**

15 Pursuant to Rule 28(e), Ariz. R. Sup. Ct., the State Bar of Arizona (the “State  
16 Bar”) writes in support of Petition R-20-0006 (the “Petition” seeking “Technical  
17 Amendments”). The State Bar has reviewed the Petition and agrees that the  
18 Technical Amendments are needed to correct and clarify a handful of technical  
19 issues in the *Arizona Rules of Civil Procedure* caused by recent amendments. These  
20 issues include such minor items as incorrect cross-references and inconsistencies in  
21 the descriptions of particular litigation events.  
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1       The State Bar does have one suggestion for a slightly different approach to  
2 resolving an issue with respect to the Tier assignment for commercial cases. As  
3 explained in the Petition, under Rule 8.1, an action may be assigned to the  
4 commercial court if the action involves certain business disputes, except if the action  
5 “seeks **only** monetary relief in an amount less than \$300,000.” Rule 8.1(c) (emphasis  
6 added). This means that an eligible business dispute could be referred to the  
7 commercial court if the amount in controversy was less than \$300,000, if a party  
8 sought non-monetary relief as well as monetary relief.  
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11       Prior to the 2019 Amendments, Rule 8.1 recognized that such disputes should  
12 be presumptively assigned to Tier 3 for discovery purposes and to accomplish that  
13 result, contained a provision stating, “Notwithstanding any contrary language in  
14 Rule 26.2(d)(1)” commercial cases would be deemed assigned to Tier 3 until and  
15 unless a different assignment was made. This provision was removed when Rule 8.1  
16 was permanently adopted.  
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19       The Petition requests that this provision be reinserted in Rule 8.1, to allow  
20 eligible commercial cases to be presumptively assigned to Tier 3 even if the  
21 monetary relief sought is less than \$300,000. Without restoring this provision, cases  
22 seeking less than \$300,000 in monetary relief but otherwise eligible for commercial  
23 court would be assigned to Tier 2 under Rule 26.2(c)(3)(B).  
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1 The State Bar agrees with this result but respectfully suggests a slightly  
2 different approach to accomplish that result. Specifically, the State Bar suggests that  
3 instead of having Rule 8.1 reference Rule 26.2(d)(1), it might be more clear to amend  
4 Rule 26.2(c)(3) to reference Rule 8.1. The State Bar proposes adding the underlined  
5 language to Rule 26.2(c)(3):  
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8 Except as provided in Rule 8.1, all cases not assigned a tier  
9 by the procedures in Rule 26.2(c)(1) or (2) are deemed to  
10 be assigned a tier based on the damages claims in the  
11 action, as defined by Rule 26.2(e).

12 Rule 8.1(e) would also be amended to restore the deleted language  
13 presumptively assigning commercial cases to Tier 3, except for the  
14 “Notwithstanding” language referenced above. Rule 8.1 would then read:

15 (e) Case Management. From the filing of the complaint  
16 unless and until the commercial court assigns the case to a  
17 different tier after the Rule 16(d) scheduling conference,  
18 cases in the commercial court are deemed to be assigned to  
19 Tier 3. Rules 16(a) through 16(j) apply to cases in the  
20 commercial court, except:

21 These two changes would clarify that the presumptive tier assignments in Rule  
22 26.2(c)(3) may be trumped by the commercial court provisions contained in Rule  
23 8.1 and would centralize the starting point for tier assignments in Rule 26.2.  
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1 **CONCLUSION**

2 With the slight modification set forth above, the State Bar recommends that  
3 the Court adopt the Technical Amendments sought in the Petition.  
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5 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2020.

6 /s/ Lisa M. Panahi  
7 Lisa M. Panahi  
8 General Counsel

9 Electronic copy filed with the  
10 Clerk of the Supreme Court of Arizona  
11 this 1<sup>st</sup> day of May, 2020.

12 by: Patricia Seguin  
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